

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Relay Services	)	CC Docket No. 98-67
And Speech-to-Speech Services for	)	
Individuals with Hearing and Speech	)	CG Docket No. 03-123
Disabilities	)	
	)	
Petition for Declaratory Ruling on	)	
Video Relay Service Interoperability	)	

To: The Commission

**TELECOMMUNICATIONS FOR THE DEAF, INC. AND  
DEAF AND HARD OF HEARING CONSUMER ADVOCACY NETWORK  
COMMENTS IN SUPPORT OF  
CCASDHH PETITION FOR DECLARATORY RULING ON  
VIDEO RELAY SERVICE INTEROPERABILITY**

Telecommunications for the Deaf, Inc. (“TDI”) and the Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”) hereby submits their comments in support of the Petition for Declaratory Ruling on Video Relay Service Interoperability (the “Petition”) submitted by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”) on February 15, 2005. By Public Notice, DA No. 05-509, released March 1, 2005 the Commission invited interested parties to file their comments.

**I. Background**

TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring

equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

DHHCAN, established in 1993, serves as the national coalition of organizations<sup>1</sup> representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

In its Petition, CCASDHH explains that a major Video Relay Service (“VRS”) provider is offering free video equipment conditioned on an exclusivity arrangement whereby the customer agrees not to initiate or receive VRS calls with other VRS providers and not to engage in direct video to video calls with customers of other VRS providers. The equipment is configured in such a way that attempts to violate the agreement are blocked. Thus, for example, when a hearing person utilizing another VRS provider attempts to call a customer of the non-interoperable VRS provider, the call is blocked, and the hearing person does not know why he or she cannot get through. Similarly, when a customer of the non-interoperable VRS provider cannot place a VRS call due to capacity call blocking, the customer may not use another VRS provider to place the call. Lastly, when customers of the non-interoperable VRS provider and

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<sup>1</sup> The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc.(TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

customers of other VRS providers attempt to place direct video calls to each other, the calls are also blocked.

## **II. Discussion**

The denial of VRS interoperability and blockage of calls inhibits the ability of people who are deaf or hard of hearing from integrating into the mainstream of society. If the call cannot go through, a person who is deaf or hard of hearing misses an opportunity—an opportunity to place or receive a business call or to communicate with someone else for personal or social reasons. Either way, the person who is deaf or hard of hearing is cut-off from communicating with the rest of society. This is antithetical to the entire premise of the Americans with Disabilities Act, which as explained below, was enacted to ensure that people with disabilities are provided the opportunity to integrate into the mainstream of society.

The denial of VRS interoperability and blockage of calls can also be dangerous. Many people who are deaf or hard of hearing rely upon VRS as their only means of telephonic communications. If an emergency call cannot go through, a person's life or property can be endangered. Yet, the denial of interoperability may prevent emergency calls from going through.

In 1990, Congress enacted the Americans with Disabilities Act (the “ADA”).<sup>2</sup> The main purpose of the ADA was to facilitate the integration of people with physical and other disabilities into the mainstream of society so that no person would be left behind. Title IV of the ADA addresses access to telecommunications by deaf and hard of hearing persons. Section 401 of Title IV, which was codified in Section 225 of the Communications Act of 1934, as amended (the “Act”),<sup>3</sup> requires that Telephone Relay Service (“TRS”) be offered and defines TRS as:

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<sup>2</sup> PL 101-336, July 26, 1990.

<sup>3</sup> 47 U.S.C. § 225.

[T]elephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio.<sup>4</sup>

In short, the ADA requires that TRS services, including VRS, be functionally equivalent to voice telephone services. Because TRS services, including VRS, must be functionally equivalent to voice services, all of the benefits enjoyed by subscribers of voice telephone services must also be made available to subscribers of all TRS services, including VRS.

A subscriber of any wireline or wireless voice telephone service can place a call to any other wireline or wireless voice telephone customer without regard to whether the other party is a subscriber of a different telephone service provider. As described above, this ability to interconnect is not available to users of the non-interoperable VRS provider and to those attempting to call subscribers of the non-interoperable VRS provider. Also, unlike the VRS situation, if a wireless voice telephone subscriber finds that he or she cannot place a call with his or her wireless provider due to either capacity or network coverage constraints, the wireless subscriber has the option of roaming on a competing carrier's network. Therefore, requiring VRS interoperability is critical to achieving functional equivalency and the intent of the ADA.

In addition to violating the functional equivalency requirement of Section 225 of the Act, the denial of VRS interoperability violates many other provisions as well:

- Section 251 of the Act<sup>5</sup> imposes a duty on all telecommunications carriers to interconnect with all other telecommunications carriers. For VRS to be functionally equivalent, all VRS providers must be interoperable with each other.

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<sup>4</sup> 47 U.S.C. § 225(a)(3).

<sup>5</sup> 47 U.S.C. § 251.

- Section 201(a) of the Act<sup>6</sup> requires the provision of service upon reasonable request. For VRS to be functionally equivalent, no VRS provider may deny a reasonable request for service by blocking an outgoing or incoming call on the basis that the call would connect with the customer of a competing VRS provider.
- Section 201(b) of the Act<sup>7</sup> requires that all practices be just and reasonable. For VRS to be functionally equivalent, no VRS provider may engage in the unreasonable practice of denying interoperability.
- Section 202(a) of the Act<sup>8</sup> prohibits unreasonable discrimination. For VRS to be functionally equivalent, no VRS provider may discriminate against subscribers of other VRS providers by blocking the call from going through.
- Section 225(d)(1)(E) of the Act prohibits “. . . relay operators from failing to fulfill the obligation of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services. . . .”<sup>9</sup> By blocking calls that would connect with subscribers of other VRS providers, a VRS provider is in violation of this provision.
- Section 251(b)(3) of the Act imposes a duty to provide dialing parity and to permit all providers “. . . to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays. . . .”<sup>10</sup> For VRS to be functionally equivalent, no VRS provider may inhibit calls that would connect

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<sup>6</sup> 47 U.S.C. § 201(a).

<sup>7</sup> 47 U.S.C. § 201(b).

<sup>8</sup> 47 U.S.C. § 202(a).

<sup>9</sup> 47 U.S.C. § 225(d)(1)(E).

<sup>10</sup> 47 U.S.C. § 251(b)(3).

with the customers of other VRS providers by configuring the equipment and directory information so that it is not possible to call such other customers.

- Section 255(b) of the Act requires manufacturers to “. . . ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. . . .”<sup>11</sup> By configuring the user equipment in such a way as to enforce exclusivity, a VRS provider that denies interoperability is denying accessibility, and is thereby violating Section 255(b).
- Section 255(c) of the Act requires that telecommunications services are “. . . accessible to and usable by individuals with disabilities, if readily achievable.”<sup>12</sup> Since VRS interoperability is readily achievable, denial of interoperability results in services that are not accessible to and usable by people who are deaf or hard of hearing in violation of Section 255(c).

Because the denial of VRS interoperability violates many provisions of the Act, it is incumbent on the FCC to issue the declaratory ruling requested by CCASDHH requiring any VRS provider who is denying interoperability to provide interoperability. In addition, specific provisions of the Act mandate the Commission to take action:

- Section 225(d) of the Act<sup>13</sup> requires the Commission to prescribe regulations to implement the ADA, including the functional equivalency requirement.

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<sup>11</sup> 47 U.S.C. § 255(b).

<sup>12</sup> 47 U.S.C. § 255(c).

<sup>13</sup> 47 U.S.C. § 225(d).

- Section 256 of the Act<sup>14</sup> requires the Commission to oversee network planning so as to ensure access to telecommunications and information services, including interconnectivity.
- Section 1 of the Act establishes as the purpose of the Commission to make available “to all of the people of the United States. . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service. . . .”<sup>15</sup> “All of the people” includes people who are deaf or hard of hearing, and Section 225(b)(1) of the Act<sup>16</sup> specifically applies Section 1 to people who are “hearing-impaired and speech-impaired.”

As the administrator of the TRS Fund,<sup>17</sup> the Commission has a special obligation to ensure that those who are compensated from the TRS Fund comply with the goals and obligations of Section 225 of the Act (the ADA), as well as all other provisions of the Act. TRS providers are compensated from funds contributed by the telecommunications carriers, and the Commission oversees their disbursement. No provider of TRS services who is compensated from the TRS Fund should be able to abuse this Federal benefit by engaging in anti-competitive activities which would eliminate competitors by denying interoperability to customers of the other VRS providers. As explained by CCASDHH in its Petition, the largest provider of VRS services has the capability of eliminating all competition by denying interoperability. If interoperability is denied, subscribers will sign up with the largest provider so that they have the ability to communicate with the largest possible pool of VRS users.

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<sup>14</sup> 47 U.S.C. § 256.

<sup>15</sup> 47 U.S.C. § 151.

<sup>16</sup> 47 U.S.C. § 225(b)(1).

<sup>17</sup> 47 U.S.C. § 225(d)(3).

The Commission recently explained that VRS providers may not restrict access to other VRS providers without the consumer's informed consent. The Commission stated:

The TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider. A consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television. Therefore, VRS consumers cannot be placed under any obligation to use only one VRS provider's service, and the fact that they may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have. In addition, a VRS provider (or its installers) should not be adjusting a consumer's hardware or software to restrict access to other VRS providers without the consumer's informed consent.<sup>18</sup>

The Commission left open the question as to whether a consumer can provide his or her consent to a VRS provider to restrict access to other VRS providers, inferring that informed consent may be permitted. However, it is unrealistic to assume that a consumer is providing informed consent when such consent is buried in a contract. Even if the consumer is aware that the contract term exists, the consumer is not likely to be aware that he or she is free to refuse to agree to the contract term without penalty. In other words, unless there is a check-off to either accept or deny exclusivity with no strings attached, the customer is not freely providing informed consent.

Of course, the reality is that if no strings were attached to refusing an exclusivity clause, and if the consumer truly understood that, then there is no reason why any educated consumer would agree to exclusivity. Since there is no reason why an educated consumer would ever agree to exclusivity if there were no strings attached to refusing exclusivity, and if the consumer truly understood that, then any consent to an exclusivity arrangement cannot possibly be informed consent (for if a consumer does not truly understand something, then that consumer is not fully informed regarding that subject and is thus incapable of providing "informed" consent).

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<sup>18</sup> Public Notice, DA 05-141, released January 26, 2005.



Therefore, TDI and DHHCAN request that the Commission find that there are no circumstances under which a consumer would provide informed consent to an exclusivity arrangement for the provision of VRS service and thus find all such arrangements to be prohibited.

### **III. Conclusion**

For the reasons stated herein, Telecommunications for the Deaf, Inc. and the Deaf and Hard of Hearing Consumer Advocacy Network respectfully request that the Commission require all providers of Video Relay Services to offer interoperable VRS services. Specifically, TDI and DHHCAN request that the Commission order that a VRS provider, through contract or through equipment configurations, (1) may not prevent a subscriber of its VRS services from initiating or receiving VRS calls with other VRS providers; and (2) may not prevent a subscriber of its VRS services from initiating or receiving direct video to video calls with customers of other VRS providers.

Respectfully submitted,

/S/

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